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Attorney for Plaintiff &
 Counter-defendant
 Paul Montwillo

UNITED STATES DISTRICT COURT
 FOR NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual;

 Plaintiff,

 vs.

WILLIAM TULL, an individual; DANIEL
 GIBBY, and individual; GIBBY
 NOVELTIES, LLC dba ARSENIC & APPLE
 PIE, a California limited liability company;
 and DOES 1-100, inclusive,

 Defendants.

WILLIAM TULL, an individual;

 Counter-Claimant,

 vs.

PAUL MONTWILLO, an individual, and
 DOES 21 through 30, inclusive,

 Counter-Defendants

Case No. C 07 3947 SI

STEPHEN SOMMERS'S SECOND
 SUPPLEMENTAL DECLARATION IN
 SUPPORT OF PLAINTIFF'S MOTION FOR
 SUMMARY JUDGEMENT

Date: April 25, 2008
Time: 9:00 a.m.
Court: 10, 19th Floor
Judge: Honorable Susan Illston

Complaint Filed: August 1, 2007
 Counterclaim Filed: January 11, 2008

 Trial Date: June 30, 2008

I, Stephen A. Sommers, declare:

1 I am an attorney licensed by the State of California, admitted to practice before
2 this Court, and am attorney of record for Plaintiff Paul Montwillo.

3 2. On March 20, 2008, I conducted the deposition of Defendant, William Tull, in
4 this action. Mr. Tull was represented by his attorney's David Y. Wong and Marc H. Greenberg.
5 The Memorandum of Points and Authorities in Reply to Defendant's Opposition to Plaintiff's
6 Motion for Summary Judgment contains citations to deposition testimony of William Tull.
7 Attached hereto are incorporated by reference herein are true and correct copies of this
8 deposition transcript pages, in full wherein each of the cited testimony excerpts may be found. I
9 declare that the deposition testimony as recited in the transcript attached accurately reflects the
10 actual deposition. The pages attached are arranged in numerical order as follows: 61, 62, 64, 65,
11 100, 104, 105-110, 112.

12 3. On or about February 5, 2008, I promulgated Requests for Production of
13 Documents and Things (Set One) Under Rule 34 upon defendants. Request number 24 requests
14 from Gibby Novelties, LLC all documents demonstrating the amount of sales generated from the
15 dolls subject to the copyright registrations subject to this case. A true and accurate copy of this
16 document is attached hereto as Exhibit B. On March 10, 2008, I received defendants' responses
17 by facsimile. A true and accurate copy of this response is also attached hereto as Exhibit B. To
18 date, Plaintiff has yet to receive any sales documents within the scope of from Gibby Novelties,
19 LLC.

20 4. At William Tull's March 20, 2008 deposition, I asked attorney for defendants
21 Daniel Gibby and Gibby Novelties, LLC about the failure to produce documents covered in the
22 document demand relating to Daniel Gibby and Gibby Novelties, LLC. The transcript of this
23 discussion is included with the deposition transcript attached as Exhibit A. At the deposition,
24 Wong stated that he would produce the documents "probably next week and half." On April 2,
25 2008, I sent an e-mail to David Wong inquiring about the documents. On April 3, 2008, Wong
26 emailed me back stating that he had been busy and requested additional two (2) week extension.
27 On the same day, I replied to his email stating that an additional two weeks was unsatisfactory. I

1 have not been contacted by Wong on the subject since. A true and accurate copy of these e-
2 mails are attached hereto as Exhibit C.

3 I certify under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct, and that I am able to testify competently hereto.

5
6 San Francisco, California

7 Dated: April 11, 2008.

8
9 /s/ Stephen Sommers
10 Stephen Sommers
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EXHIBIT A

1 the question again.

2 At any time was there a prototype developed for
3 Arsenic & Apple Pie for a doll that had a hair style
4 that would be referred to as a mullet?

5 A. No, at no time was a mullet doll ever developed by
6 Arsenic & Apple Pie, period.

7 Q. And at any time did you offer Mr. Montwillo money in
8 return for a prototype doll called a Mullet Doll?

9 MR. WONG: That's been asked and answered.

10 THE WITNESS: Why would I offer him money
11 for something that didn't exist?

12 MR. SOMMERS:

13 Q. But you do recall having a formal agreement with,
14 extending a formal agreement to Mr. Montwillo to buy
15 his 50 percent share of the company, correct?

16 A. It was a tentative agreement, yes.

17 Q. A tentative agreement, okay. And the exhibit -- is
18 that 2, I believe?

19 A. M-hm.

20 Q. Could that be one of the tentative agreements?

21 MR. WONG: It could be anything.

22 THE WITNESS: It could be anything. Yeah,
23 that tentative agreement was made verbally.

24 MR. SOMMERS:

25 Q. Was there ever a written agreement that was part of

1 the tentative agreement?

2 A. No. I didn't say, "Here, take this piece of paper.
3 This is my tentative agreement."

4 Q. Did you have anybody do that on your behalf?

5 A. Not that I recall.

6 Q. Can you turn to the first page of this agreement,
7 please, of Exhibit 2?

8 On May 31, 2003, was David Wong your attorney?

9 A. Yes.

10 Q. And did he represent you with all your affairs with
11 regards to Mr. Montwillo and the purchase of his
12 membership?

13 A. All of my affairs?

14 Q. With regards to the purchase --

15 A. No, he did not.

16 Q. -- of Mr. --

17 A. Not all of my affairs, no.

18 Q. Okay.

19 A. As a matter of fact, I would say no. But what went
20 on between myself and Mr. Montwillo was between us
21 two. We talked together; we talked ourselves.

22 Q. But you hired Mr. Wong to assist you with your
23 negotiations with Mr. Montwillo, correct?

24 A. No, I did not.

25 Q. Did Arsenic & Apple Pie hire Mr. Wong to assist in

1 copied, "CC William Tull."

2 Do you recall receiving a copy of this letter?

3 A. No, I don't.

4 Q. Do you have a system for retaining letters that are
5 generated by attorneys that you employ?

6 A. A system? No, I don't have a system.

7 Q. Do you have a file where you keep letters that your
8 attorney gives you?

9 A. Embarrassingly, no.

10 Q. Do you see at the bottom here where it says,
11 "Enclosure proposed purchase agreement"?

12 A. Uh-huh.

13 Q. Do you have any reason to believe that this letter
14 was not sent to Mr. Montwillo with an attached
15 proposed purchase agreement?

16 A. Do I have any reason to believe that it was not sent
17 to him? So you're asking do I have a reason that it
18 was sent to him, right?

19 MR. SOMMERS: Yeah.

20 MR. WONG: No.

21 MR. SOMMERS: Well, you can answer it either
22 way you like.

23 MR. WONG: Rephrase the question if that's
24 what you want to do.

25

1 MR. SOMMERS:

2 Q. Does it seem reasonable to you that this letter with
3 the attached purchase agreement was sent to
4 Mr. Montwillo by Mr. Wong?

5 A. Reasonable?

6 Q. Do you believe it happened?

7 A. Honestly, belief is a very funny concept. I believe
8 in a lot of things. I believe maybe in the higher
9 power. But belief isn't proof. So I mean that's --
10 I don't know. I would have to guess to say that that
11 really truly happened, wouldn't I? Believe.

12 MR. WONG: You've answered the question.

13 MR. SOMMERS:

14 Q. Do you have a reason to believe that this letter was
15 not sent to Mr. Montwillo with the attached
16 agreement?

17 A. I'm not going to answer that anymore. That's silly
18 again.

19 Q. You said that you had hired Mr. Wong as your
20 attorney, and he's been your attorney for some time,
21 that he has been your attorney with regards to the
22 dissolution of Arsenic & Apple Pie and the purchase
23 of Mr. Montwillow's share?

24 A. Wait a minute; wait a minute.

25 Q. Here before you is a --

1 MR. SOMMERS: The record can reflect that
2 Mark Greenberg has entered the room, attorney for the
3 defendant.

4 MR. GREENBERG: Hi.

5 MR. SOMMERS: Hi.

6

7 (Discussion off the record.)

8

9 MR. SOMMERS:

10 Q. The question is, have you ever seen this document
11 before?

12 A. Yes, I have.

13 Q. What is it?

14 A. It is an agreement for the purchase of membership
15 interest.

16 Q. And is it fair to say it's between you and
17 Mr. Montwillo?

18 A. Yes.

19 Q. And it was never executed, correct?

20 A. No. It wasn't.

21 Q. And who drafted this agreement?

22 A. I'm going to assume that David did.

23 Q. And you're referring to David Wong, of course?

24 A. David Wong, yeah.

25 Q. And -- okay, all right. And then -- I hate putting

1 3.8 reads: "If a member loans money to the company,
2 said loan shall bear interest at" -- and I believe
3 that's supposed to say "variable rates depending on
4 the origin of funds, percentage per annum as of the
5 date the funds were advanced to or on behalf of the
6 company until paid."

7 Is that your handwriting where it has in there
8 "variable rates depending upon the origin of the
9 funds"?

10 A. I believe it is my handwriting, yes.

11 Q. And is it also your handwriting in section 3.10 where
12 it says, "variable rates depending upon the origin of
13 the funds"?

14 A. Yes.

15 Q. And was it under these general sections that you
16 ended up loaning so much money to the company?

17 A. Yes.

18 Q. Okay, all right. If you could please turn to page 8.

19 Do you have a page 8, David?

20 MR. WONG: No, no.

21 MR. SOMMERS: You're good?

22 MR. WONG: Yeah.

23 MR. SOMMERS: Okay.

24 Q. At the bottom, 2.7, it says, "The managing members
25 shall be as follows: Paul Montwillo."

1 Then after that, it says, "Manager in charge of
2 art direction, design and advertising of product
3 line, including but not limited to corporate
4 identification, product design, packaging, website
5 design, website maintenance and print advertising."

6 And then it says, "William Tull, manager in
7 charge of administration, business affairs,
8 accounting, distribution, sales and manufacturing."

9 Is it fair to say that your understanding of this
10 section was a differentiation of the scope of
11 responsibility between you and Mr. Montwillo?

12 A. When it was initially done, yes.

13 Q. That he would do some things, and you would do some
14 other things?

15 A. Yes.

16 Q. Is there anywhere in this agreement that you were
17 aware of -- and I can say I've read it several
18 times -- that you could point to me where there is a
19 conveyance of a copyright?

20 A. Again, you're trying to confuse me. And let me tell
21 you why. You first got me going back saying that I
22 dissolved the company when I did not. Paul's
23 bankruptcy dissolved the company. So I'm really --
24 could you possibly ask me that question one more
25 time?

1 Q. Move to strike as unresponsive, but that's fine.

2 Could you point to anything in this document --
3 when you signed it, right, this is the agreement.
4 You said you read it. Where in this document if --
5 or let me rephrase that.

6 Is there a place in this document that assigns or
7 conveys in any manner intellectual property?

8 A. We --

9 MR. WONG: From whom to whom?

10 MR. SOMMERS:

11 Q. Anybody.

12 A. Again, I -- I -- again, I'm being confused.

13 Q. Okay. Do you understand -- okay. Well, let me ask
14 this.

15 Do you have an understanding that there is a
16 clause in this document that conveys to anybody --
17 I'll even go more broad. So scratch that earlier
18 question.

19 Do you have an understanding that there is
20 somewhere in this document a mention of intellectual
21 property?

22 A. It was understood. My contribution was financial;
23 Paul's was the design of the product, and that the
24 product belonged to the company. And he also -- when
25 we went to Steinhart & Falconer, he knew that the

1 products were not copyrightable or trademarkable
2 trademarticable [sic]? That's a good one. So
3 therefore, that subject had already been broached and
4 understood between both parties.

5 Q. Okay. You're not answering my question. The
6 question is, do you understand that this document
7 contains a clause that discusses intellectual
8 property, this document?

9 A. I can't answer that specific question because I -- I
10 don't know. I'm a layperson.

11 Q. Okay, all right. So as a layperson, is there any
12 part of this that you understood to address the
13 issues of intellectual property?

14 A. No, because Paul -- it was never brought up. Nothing
15 was ever brought up about intellectual property.
16 Nothing. This was -- everything that was done was
17 the property of Arsenic & Apple Pie, and I think -- I
18 think that was fairly clear.

19 Q. And is it your position that the things that were
20 created, the dolls, et cetera, were the property of
21 Arsenic & Apple Pie based on an oral agreement
22 between you and Paul?

23 MR. WONG: I think we need to take a break.

24 MR. SOMMERS: I have a question pending. I
25 would just like a simple answer.

1 THE WITNESS: All right. Excuse me. I have
2 to go to the bathroom anyway. Where is the men's
3 room?

4 MR. SOMMERS: I'd like the record to reflect
5 that I'm asking Mr. Tull to answer a simple question,
6 and he's leaving with his attorney before he comes
7 back to answer.

8
9 (Off the record at 3:15 p.m. and
10 back on the record at 3:19 p.m.)
11

12 MR. SOMMERS: I need to go back on the
13 record. I need to do a couple house-cleaning items.
14 Q. First I want to mark this as Exhibit D.

15 And so Mr. Tull, I'd like you to say on the
16 record that this is the same box that I held up
17 before where you said that the -- that you don't
18 recall a box with the orange coloring on it. Is that
19 correct?

20 A. No. That may be from maybe even another Barbie,
21 alternative Barbie person, so I never saw that box.

22 Q. Right. The question was, have you ever seen this
23 before?

24 A. Um -- no. Well, I don't know.

25 Q. Will you look at it, please? Do you have a

1 recollection of ever seeing this before?

2 A. What is it?

3 Q. It is what it is.

4 A. You mean a doll with a bump underneath the dress?

5 Q. I'm saying, have you ever seen this specific
6 doll with a bump --

7 A. Is that the doll that you're purporting to be
8 pregnant because there's only a bump underneath the
9 dress. It's nothing like the other pregnant doll.

10 Q. Will you please answer my question, Mr. Tull?

11 Have you ever seen this before?

12 A. No.

13 Q. Okay. I'm going to mark this as Exhibit D.

14

15 (Whereupon a doll in a box was marked
16 for identification as Plaintiff's
17 Exhibit D.)

17

18 MR. SOMMERS: And while we have everybody
19 here, I want to get on the record. Mr. Wong, do you
20 have any intention of producing any documents
21 relating to Gibby Novelties which I requested in our
22 document request?

23 MR. WONG: With regard to the documents of
24 Gibby Novelties --

25 MR. SOMMERS: You have yet to produce a

1 shred of -- not a single piece of paper that has
2 anything to do with Daniel Gibby or Gibby Novelties.
3 I don't have an email; I don't have any financial
4 information; I don't have any sales information which
5 all have been requested.

6 MR. WONG: Well --

7 MR. SOMMERS: Do you have any intention of
8 producing any of those documents?

9 MR. WONG: I understand that. I've reviewed
10 it. I believe that with regard to the documents that
11 pertain strictly to the doll sales, that those can
12 and will be produced. But those documents that I do
13 have require expunging of excess material that does
14 not relate to that case.

15 MR. SOMMERS: When will you get me those
16 documents? They were due over a week ago.

17 MR. WONG: Well, I believe they'll be
18 produced probably in the next week and a half.

19 MR. SOMMERS: The next week and a half?

20 MR. WONG: Yeah.

21 MR. SOMMERS: Conveniently timed after my
22 opposition to the summary judgment motion I'm filing
23 tomorrow?

24 MR. WONG: I don't think it's pertinent to
25 your summary judgment.

1 Counsel.

2 MR. SOMMERS: Do you intend on also
3 producing a privilege log with these to identify the
4 documents that you're not going to produce?

5 MR. WONG: This will be the last thing I
6 answer. For whatever is withheld, a privilege log
7 will be produced.

8 MR. SOMMERS: And that will be produced at
9 the same time?

10 MR. WONG: Yeah.

11 MR. SOMMERS: Okay.

12 Q. Mr. Tull, have you identified language in the
13 operating agreement that, after conferring with both
14 of your attorneys for ten minutes, that identify
15 intellectual property in any way?

16 A. Yes.

17 Q. Where have you identified that?

18 A. Um, what page would that be on? The duties of the
19 members, page 8.

20 Q. Are you referring to section 2.7?

21 A. Excuse me. Let me go there so I can tell you. Yes,
22 section 2.7.

23 Q. And at the time -- all right. At any time did
24 Arsenic & Apple Pie hire anybody to help them with
25 the design of products?

EXHIBIT B

STEPHEN A. SOMMERS, SBN 225742
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Attorney for Plaintiff/Cross-
Defendant Paul Montwillo

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO,
Plaintiff,
vs.

WILLIAM TULL; DANIEL GIBBY; GIBBY
NOVELTIES, LLC dba ARSENIC & APPLE
PIE; DOES 1-100, inclusive,
Defendants.
WILLIAM TULL,
Counter-Claimant,

vs.
PAUL MONTWILLO, an individual, and
DOES 21 through 30, inclusive,
Counter-Defendants.

Case No.: C 07 3947 SI

PAUL MONTWILLO'S REQUEST FOR
PRODUCTION OF DOCUMENTS &
THINGS (SET ONE) UNDER RULE 34

Propounding Party: Plaintiff/Cross-defendant Paul Montwillo

Set Number: One

Responding Party: Defendants/Cross-complainants William Tull, Daniel Gibby, and Gibby
Novelties, LLC

MONTWILLO v. TULL (et al.)
MONTWILLO'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE)

SOMMERS LAW GROUP

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff/cross-defendant Paul Montwillo requests Defendants/Cross-complainants William Tull, Daniel Gibby, and Gibby Novelties, LLC respond within 30 days to the following requests at the offices of Montwillo's legal counsel:

Request for Production No. 1:

Please produce all DOCUMENT(S) ["DOCUMENT(S)" as used herein, means and includes every kind of written, typewritten, recorded, printed or graphed material, original or copy, including but not limited to, any correspondence, handwritten notes, calendar or daytime entries, computer printout or stored information, audio tape, videotape, tangible information produced by any nonparty, agreements, drafts of agreements, invoices, bills, receipts, checks, canceled checks, billing statements of attorneys, invoices of vendors, maps, plans, transcripts of hearings, minutes of meetings, notes of meetings, notes of telephone conversations, agreements, contracts, insurance policies, memoranda, diaries, logs, invoices, ledgers, journals, telegrams, telexes, reports, letters, invoices, statements, papers, books, and includes the original or any copies or drafts thereof or any other form of "writing" as defined by Federal Rules of Evidence Rule 401] reflecting, relating to, or referring to the effort made by anyone at anytime to design the DOLLS SUBJECT TO THIS LITIGATION ["DOLLS SUBJECT TO THIS LITIGATION" as used herein means, means all dolls that share the distinctive characteristics of the dolls described in paragraph 9 and Exhibit A to Montwillo's Complaint for Copyright Infringement, designated under Copyright Numbers VAu 531-338, VA 1-271-341, VA 1-271-343, VA 1-271-342, VAu 531-338].

Request for Production No. 2:

Please produce all DOCUMENT(S) reflecting, regarding, relating to, or referring to the manufacturing of the DOLLS SUBJECT TO THIS LITIGATION at anytime.

Request for Production No. 3:

Please produce all DOCUMENT(S) reflecting, regarding, relating to, or referring to the advertising of the DOLLS SUBJECT TO THIS LITIGATION from the period of June 25, 2004 to the present.

Request for Production No. 4:

Please produce all DOCUMENT(S) reflecting, regarding, relating to, or referring to the sale or distribution of the DOLLS SUBJECT TO THIS LITIGATION from the period of May 1, 2000 to present.

Request for Production No. 5:

Please produce all DOCUMENT(S) reflecting, regarding, relating to, or referring to the money expended to design the DOLLS SUBJECT TO THIS LITIGATION.

Request for Production No. 6:

Please produce all DOCUMENT(S) that substantiate the allegation contained in paragraph 5 of the Cross-complaint: "The business' capital structure was a classic 'sweat equity' arrangement - Tull provided all of the financing for the venture, and Montwillo contributed his designs for the dolls..."

Request for Production No. 7:

Please produce all DOCUMENT(S) that reflect, regard, refer or relate to any causal connection between Montwillo's petition for bankruptcy and Arsenic & Apple Pie, LLC being forced to windup and dissolve.

Request for Production No. 8:

Please produce all DOCUMENT(S) that reflect, regard, refer or relate to any and all meetings of members of Arsenic & Apple Pie, LLC.

Request for Production No. 9:

Please produce all DOCUMENT(S) that reflect, regard, refer or relate to any and all efforts made to follow the procedure to determine the fair market value of Arsenic & Apple Pie, LLC, as outlined in section 8.7 of the Operating Agreement of Arsenic & Apple Pie, LLC.

Request for Production No. 10:

Please produce all written and electronic communications between William Tull and David Wong that mention, relate, refer, or regard Arsenic & Apple Pie, LLC in any manner.

///

///

MONTWILLO v. TULL (et al.)

MONTWILLO'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE)

Request for Production No. 11:

Please produce all DOCUMENT(S) created by, drafted by, generated by or produced by David Wong that refer to, reflect, regard, or mention Arsenic & Apple Pie, LLC in any manner.

Request for Production No. 12:

Please produce all DOCUMENT(S) that substantiate the allegation in paragraph 6 of the Cross-complaint that "The decision to dissolve the Company was involuntary..."

Request for Production No. 13:

Please produce all DOCUMENT(S) that substantiate the value of unsold product as alleged in paragraph 7 of the Cross-complaint that "At the time of windup and dissolution, the Company's balance sheet showed that its primary asset was in the form of unsold product inventory valued at \$31,995.57..." The response should include, but not limited to, all related financial statements, bank account statements, purchase orders, tax documents, distribution records, and valuation statements.

Request for Production No. 14:

Please produce all DOCUMENT(S) that substantiate all financial contributions to Arsenic & Apple Pie, LLC by William Tull, including but not limited to bank account statements, loan records, receipts, billing and invoice statements, and all repayment records.

Request for Production No. 15:

Please produce all DOCUMENT(S) that reflect, regard, refer, or mention the value of the designs of the DOLLS SUBJECT TO THIS LITIGATION at the time of the windup and dissolution of Arsenic & Apple Pie, LLC.

Request for Production No. 16:

Please produce all DOCUMENT(S) that reflect, regard, refer, or mention that the designs of the DOLLS SUBJECT TO THIS LITIGATION were created as work for hire.

Request for Production No. 17:

Please produce all DOCUMENT(S) that reflect, regard, refer to, or mention efforts made by Arsenic & Apple Pie, LLC to solicit bids for purchase of the designs of the DOLLS SUBJECT TO THIS LITIGATION.

MONTWILLO v. TULL (et al.)

MONTWILLO'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE)

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 Tel: (415) 442-6611

Attorneys for Defendants William Tull, Daniel Gibby and
 Gibby Novelties, LLC

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual)	CASE NO. C 07 3947 SI
)	
Plaintiff,)	Responses to Request for Production, Set One
)	
vs.)	
)	
WILLIAM TULL; DANIEL GIBBY;)	
GIBBY NOVELTIES, LLC dba ARSENIC)	
& APPLE PIE, a California Limited)	
Liability Corporation and DOES 1 through)	Complaint filed: August 1, 2007
20, Inclusive,)	
)	
Defendants.)	

And related Counter-Claim of Tull

Propounding Party:	Plaintiff/Cross-Defendant Paul Montwillo
Responding Party:	Defendant/Cross-Claimant William Tull, Defendants
	Daniel Gibby and Gibby Novelties
Set:	One

MONTWILL V. TULL, ET AL. USDC Action No. C 07 3947 SI

Responses to Request for Production, Set One

1 Defendant/Cross-Claimant Tull and Defendants Gibby and Gibby Novelties, LLC
2 (hereinafter "Defendants") hereby provide the following responses to Request for Production,
3 Set One, served by Plaintiff and Cross-Defendant Montwillo as follows:

4 **Preliminary Statement**

5 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, the above responding
6 parties make the following objections and responses. While Defendants have attempted to
7 investigate all of the facts surrounding the claims and facts pertaining to the instant action, and
8 makes the following disclosures in good faith, their responses are preliminary in nature and their
9 discovery is continuing. To the best of Defendants' knowledge, information, and belief, the
10 following responses have been formed after reasonable inquiry, and the information provided is
11 complete and correct as of the time they are made. Due to the continuing nature of their
12 investigation and discovery efforts, Defendants reserve the right to amend and/or supplement
13 these responses as pertinent facts become known in the future.

15 In responding to Plaintiff's discovery, Defendants do not represent that they have identified,
16 disclosed, or described every fact, document, tangible thing, or witness possibly relevant to this
17 litigation, nor do they waive their right to object to the production of any document or tangible
18 thing disclosed herein on the basis of relevancy, undue burden, confidentiality, or any other
19 valid objection. In particular, Defendants do not waive and specifically reserve: (1) the right to
20 object on the grounds of competency, privilege, relevancy and materiality, hearsay, or any other
21 proper grounds, to the use of such information for any purpose, in whole or in part, at any
22 subsequent time in this action or in any other action; (2) the right to object on any and all
23 grounds, at any time, to any other discovery request or proceeding involving or relating to the
24 subject matter of these disclosures. All such objections and grounds are therefore reserved and
25 may be asserted at the time of trial herein.

26 In the addition to the foregoing, Defendants object to any and all Requests which seek
27 information which would violate the attorney-client communication privilege, the federal and
28 state constitutional privacy protections concerning confidential financial information, and the

MONTWILL V. TULL, ET AL. USDC Action No. C 07 3947 SI


Responses to Request for Production, Set One

1 work product of their attorney. Any inadvertent disclosure of such information shall remain
2 subject to the above reservations and shall not constitute a knowing waiver by Defendants.

3 Without waiving the foregoing admonitions, objections and conditions, Defendants
4 respond as follows:

5
6 **Request for Production 1-25:** Without waiving all applicable objections to the instant
7 Requests, Defendants' respond that all documentation responsive to Plaintiff's Requests have
8 either been previously produced to Plaintiff on February 8, 2007 in the course of discovery in the
9 related State Court Action entitled *Montwillo v Tull, et al*, San Francisco Superior Court Action
10 No. 442352, now abandoned by Plaintiff, or were produced by Defendants to Plaintiff on
11 November 30, 2007, with Defendants' Rule 26 disclosure. Should Plaintiff require additional
12 copies of said documentation, they will be provided. Discovery is continuing.

13
14 DATED: March 7, 2008

15 
16 _____
17 David Y. Wong, Attorney at Law
18 Attorneys for Defendants William Tull, Daniel
19 Gibby and Gibby Novelties, LLC
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25
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VERIFICATION

I, William Tull, Jr., declare as follows:

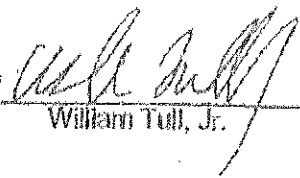
1. I am the Defendant and Cross-Complainant in the above-captioned action and do hereby attest to the veracity of my responses to the foregoing Request for Production, Set One.

2. All information stated herein is based on my own personal knowledge of same, except for such responses stated on information and belief and as to those facts I believe them to be true, correct, and complete.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of March, 2008.

BY


William Tull, Jr.

VERIFICATION

I, Daniel Gibby, declare as follows:

1. I and Gibby Novelities, LLC are Defendants in the above-captioned action and on behalf of myself and Gibby Novelities, LLC, I do hereby attest to the veracity of the responses to the foregoing Request for Production, Set One.

2. All information stated herein is based on my own personal knowledge of same, except for such responses stated on information and belief and as to those facts I believe them to be true, correct, and complete.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ___ day of March, 2008.

BY


Daniel Gibby

MONTWILL V. TULL, ET AL. USDC Action No. C 07 3947 SI

Responses to Request for Production, Set One

174-998-2961

AFFIDAVIT AND DECLARATION OF PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

I, the undersigned, am employed in the county aforesaid; I am over the age of eighteen years and not a party to the within action.

I am employed by the Law Offices of David Y. Wong, 100 Shoreline Highway, Suite 100B, Mill Valley, California 94941 ("the firm").

On March 7, 2008, I served the within document(s) entitled:

Defendants William Tull, Daniel Gibby and Gibby Novelties' Responses to Interrogatories, Set One, Responses to Requests for Admission, Set One and Responses to Request for Production, Set One

on the interested parties in this action by mailing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, and by causing such envelope to be deposited in the mail for delivery by first class mail, addressed as follows:

Stephen Sommers
870 Market Street, Suite 1142
San Francisco, CA 94102
839-8569
956-0878 fx

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing with the United States Postal Service: it is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postal meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 7, 2008, at Mill Valley, California.



DAVID Y. WONG

EXHIBIT C

Stephen Sommers <stevesommers@gmail.com>

Document responses

Stephen Sommers <stevesommers@gmail.com>

Wed, Apr 2, 2008 at 1:17 PM

To: David Wong <dwong91@yahoo.com>

Mr. Wong,

On the record at Mr. Tull's deposition of March 20, 2008, you said that you would provide me documents regarding Gibby Novelties doll sales that were subject to Montwillo's document request. You said you would do so in a "week and a half." Do you intend on producing those documents?

Stephen Sommers

--

SOMMERS LAW GROUP
Attorneys and Counselors at Law
Employment and General Business Litigation

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Stephen Sommers <stevesommers@gmail.com>

Document responses

David Wong <dwong91@yahoo.com>

Thu, Apr 3, 2008 at 3:18 PM

To: Stephen Sommers <stevesommers@gmail.com>

I'm sorry, I have been busy with this case, as you. I will need an additional two weeks.

dyw

[Quoted text hidden]

[Quoted text hidden]

David Y. Wong, Attorney at Law
100 Shoreline Highway, Suite 100B
Mill Valley, CA 94941
(415)339-0430 Tel.
(415) 332-8679 Fx.
e-mail: dwong91@yahoo.com

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Stephen Sommers <stevesommers@gmail.com>

Document responses

Stephen Sommers <stevesommers@gmail.com>

Thu, Apr 3, 2008 at 3:50 PM

To: David Wong <dwong91@yahoo.com>

David,

I'm sorry, but I don't think that will be sufficient.

Steve

[Quoted text hidden]
